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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

**SEP 11 2023**

  
BY: Alexus Fierro, Deputy

Attorneys for Plaintiff, on behalf of the State of California as the Real Party in Interest

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO

PAMELA FRAYRE, individually, on a  
representative basis, and on behalf of all  
others similarly situated;

Plaintiff,

vs.

VICTOR VALLEY HOSPITAL  
ACQUISITION, INC., a California  
Corporation; and DOES 1 through 20,  
inclusive;

Defendants.

Case No.: CIVSB2313563  
[Assigned to Hon. Jessica Morgan, Dept. S26,  
for all purposes]

**FIRST AMENDED COMPLAINT**

**REPRESENTATIVE ENFORCEMENT  
ACTION COMPLAINT [Private  
Attorneys General Act of 2004 ("PAGA"),  
Lab. Code § 2698, et seq.]**

**PAGA CLAIMS**

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Timely Pay Wages Each Period
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements

**JURY TRIAL DEMANDED**

1 Plaintiff Pamela Frayre ("Plaintiff") brings this Private Attorneys General Act ("PAGA")  
2 Representative Action Complaint ("First Amended Complaint"), on behalf of the State of  
3 California as the real party in interest,<sup>1</sup> against Defendants as follows.

4 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

5 1. Plaintiff brings this action against her former employer(s), Defendants Victor  
6 Valley Hospital Acquisition, Inc. and DOES 1 through 20, inclusive, (collectively, "Defendants")  
7 on behalf of the State of California, seeking civil penalties under PAGA for Labor Code  
8 violations committed against all current and former nonexempt employees employed by  
9 Defendants in California within the last one year and 65-days prior to the filing of this action  
10 (hereinafter, the "Aggrieved Employees"). Such violations include, but are not limited to,  
11 Defendants' failure to pay all wages owed, including minimum, regular, and overtime wages,  
12 failure to provide meal periods, failure to provide rest breaks, failure to timely pay wages upon  
13 separation of employment, and failure to provide accurate itemized wage statements.

14 2. Plaintiff has been employed by Defendants from approximately January 2022  
15 through present.

16 3. Plaintiff alleges on information and belief that the Aggrieved Employees were  
17 subjected to the same policies, working conditions, and corresponding wage and hour violations  
18 to which Plaintiff was subjected during employment.

19 4. Plaintiff and the Aggrieved Employees were not provided all minimum, regular,  
20 and overtime wages due to Defendants' failure to accurately record and compensate for all hours  
21 worked. As one such example, Defendants required Plaintiff and the Aggrieved Employees to  
22 clock out for meal periods but continue to perform work off-the-clock. However, because this  
23 time was spent under Defendants' control but before being allowed to clock in, it was  
24 uncompensated in violation of California law and led to minimum, regular, and overtime wage  
25 violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es]

26  
27 <sup>1</sup> Because a PAGA action is aimed at deterring and punishing violations of the Labor Code, the  
28 State of California "is always the real party in interest in the suit." *Iskanian v. CLS Transp. of  
Los Angeles, LLC* (2014) 59 Cal.4th 348, 360; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175,  
185 (all PAGA claims "are brought on the state's behalf").

1 not allow employers to require employees to routinely work for minutes off the clock without  
2 compensation”); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable  
3 when employee is under company’s control and where the tasks served the employer’s interests).

4 5. Also, at all relevant times, Plaintiff and the Aggrieved Employees were paid on an  
5 hourly basis but were entitled to and did receive additional nondiscretionary compensation (such  
6 as shift differentials) However, during workweeks where the Aggrieved Employees worked  
7 overtime hours and earned additional nondiscretionary compensation, Defendants failed to  
8 include that compensation in the calculations for the regular rate of pay and instead paid  
9 overtime at only 1.5 times the base rate of pay – violating the well-established rule that overtime  
10 must always be paid at time and one-half the regular rate of pay.

11 6. Plaintiff and the Aggrieved Employees were also denied 30-minute off-duty meal  
12 periods, as mandated by California law. As described above, Plaintiff and the Aggrieved  
13 Employees were frequently denied compliant meal periods, because when returning from meal  
14 periods, employees were required to undergo the same off-the-clock procedures as described above  
15 resulting in shortened meal periods. Additionally, the Aggrieved Employees were subjected to  
16 meal period violations when they were: (1) unable to take a meal period due to workload, (2)  
17 forced to take an on-duty meal period while under the control of the Company, (3) forced to take  
18 a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not  
19 provided a mandated second meal period for shifts in excess of 10 hours.

20 7. Defendants also failed to provide Plaintiff and the Aggrieved Employees with 10  
21 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated  
22 by California law. Defendants did not schedule rest breaks, the Aggrieved Employees were  
23 unable to leave the premises for rest breaks, and the Aggrieved Employees were often not  
24 authorized and/or permitted to take mandated rest breaks due to being overwhelmed by their  
25 hectic workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees  
26 worked longer shifts, Defendants failed to authorize and/or permit mandated third or fourth rest  
27 breaks.  
28

1           8.       Plaintiff also alleges that she and the Aggrieved Employees were not paid all  
2 wages due and owing each pay period (Labor Code § 204) and upon separation of employment  
3 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants  
4 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Aggrieved  
5 Employees at the time their employment ended with Defendants, including, but not limited to  
6 minimum, regular, and overtime wages, wage premiums, vacation wages, among others.

7           9.       Plaintiff further alleges that Defendants failed to provide accurate itemized wage  
8 statements that fully complied with the requirements of Labor Code § 226(a). For instance, the  
9 Company failed to include shift differential hourly rates of pay during pay periods were Plaintiff and  
10 Aggrieved Employees worked the night shift.

11          10.      Plaintiff alleges that Defendants' violations of the wage and hour components of  
12 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their  
13 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over  
14 its competitors.

15          11.      At all material times, Defendants and DOES 1 through 20 were and/or are the  
16 Aggrieved Employees' employers or persons acting on behalf of the Aggrieved Employees'  
17 employer, within the meaning of California Labor Code § 558, who violated or caused to be  
18 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating  
19 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each  
20 underpaid employee as set forth in Labor Code § 558 and under California law.

21          12.      Plaintiff brings this lawsuit on behalf of the State of California, as the real party in  
22 interest, to recover all applicable and available PAGA remedies for violations of the California  
23 Labor Code committed against the Aggrieved Employees as alleged herein, as well as attorneys'  
24 fees, costs, and/or other damages as permitted by PAGA. Plaintiff reserves the right to name  
25 additional representatives throughout the State of California.

26       **II.    JURISDICTION**

27          13.      This Court has jurisdiction over the claims for relief of Plaintiff and the  
28 Aggrieved Employees pursuant to the Labor Code and the IWC Wage Orders.

1 **III. VENUE**

2 14. Venue as to each Defendant is proper in this Court pursuant to Code of Civil  
3 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful  
4 acts alleged herein have a direct effect on Plaintiff and the Aggrieved Employees in San  
5 Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Aggrieved  
6 Employees in San Bernardino County. *See Crestwood Behavioral Health, Inc. v. Superior Court*  
7 (2021) 60 Cal.App.5th 1069, 1075 (“venue is proper in any county in which an aggrieved  
8 employee worked and Labor Code violations allegedly occurred.”).

9 **IV. PARTIES**

10 **Plaintiff**

11 15. Plaintiff and PAGA Representative Pamela Frayre has been employed by  
12 Defendants from approximately January 2022 through present and performed work for  
13 Defendants in San Bernardino County.

14 **Defendants**

15 16. Plaintiff is informed and believes and thereon alleges that Defendant Victor  
16 Valley Hospital Acquisition, Inc. is a California Corporation authorized to and doing business in  
17 San Bernardino County, California. Plaintiff is also informed and believes that Defendant Victor  
18 Valley Hospital Acquisition, Inc. is and/or was the legal employer of Plaintiff and the Aggrieved  
19 Employees during the applicable statutory periods.

20 17. Plaintiff is ignorant of the true names, capacities, relationships, and extent of  
21 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,  
22 inclusive, but on information and belief alleges that those Defendants are legally responsible for  
23 the payment of penalties and damages to Plaintiff and all Aggrieved Employees by virtue of  
24 Defendants’ unlawful actions and practices and therefore sue these Defendants by such fictitious  
25 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE  
26 Defendants when ascertained.

27 18. Plaintiff is informed and believes and thereon alleges that she and the Aggrieved  
28 Employees worked under the joint direction and control of Defendants and that Defendants, and

1 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,  
2 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of  
3 each Defendant are legally attributable to the other Defendants. On information and belief, a  
4 unity of interest and ownership between each Defendant exists such that all Defendants acted as  
5 a single employer of Plaintiff and other Aggrieved Employees.

6 19. Furthermore, Plaintiff is informed and believes and thereon alleges that  
7 Defendants, and each of them, are an integrated enterprise and should be treated as a single  
8 employer because these entities share an interrelation of operations, with common human  
9 resources and personnel policies and shared common offices and facilities. Additionally,  
10 Defendants also have a shared website, common management, a centralized control of labor  
11 operations, and common ownership or financial control.

12 20. Plaintiff is informed and believes and thereon alleges that, in conducting  
13 themselves in the manner described herein, Defendants, and each of them, were acting in active  
14 concert with one another such that the acts of each were and are fully attributable to the others in  
15 all material respects. Plaintiff is further informed and believes that at all relevant times  
16 Defendants and each of them are now, and at all material times herein mentioned were, the  
17 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining  
18 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and  
19 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of  
20 their remaining co-Defendants.

21 21. Plaintiff is further informed and believes that at all relevant times, Defendants  
22 have been inadequately capitalized to conduct business, have failed to follow appropriate  
23 corporate formalities, and have simply been a shell and instrumentality through which  
24 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,  
25 the corporate veil should be pierced, and any liability attached to Defendants should be imposed  
26 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the  
27 separate existence of these corporate entities would permit abuse of the corporate privilege,  
28 thereby sanctioning fraud and promoting injustice.

1 **V. PAGA CAUSES OF ACTION (Labor Code §§ 2698 – 2699.5)**

2 22. Plaintiff is an “aggrieved employee” under the PAGA as she was employed by  
3 Defendants during the applicable statutory period and suffered one or more of the Labor Code  
4 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil  
5 action filed on behalf of the State of California and for violations committed against the  
6 Aggrieved Employees.

7 23. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to  
8 Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by  
9 PAGA through a representative action pursuant to the PAGA and the California Supreme Court  
10 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor  
11 does she, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

12 24. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing  
13 to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to  
14 Defendants of the specific provisions of the Labor Code alleged to have been violated, including  
15 the facts and theories to support the alleged violations. Now that sixty-five (65) days have  
16 elapsed since Plaintiff provided notice of the claims alleged herein without the LWDA assuming  
17 jurisdiction over the claims alleged, Plaintiff has fully satisfied her administrative prerequisites  
18 for bringing suit under the PAGA.

19 **FIRST CAUSE OF ACTION**

20 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

21 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

22 *Against All Defendants*

23 25. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
24 as if fully alleged herein.

25 26. Plaintiff and the Aggrieved Employees were not exempt from the requirement to  
26 be paid at least the applicable California minimum wage throughout the statutory period for each  
27 hour worked.  
28

1           27. Plaintiff and the Aggrieved Employees were not provided proper minimum and  
2 regular wages due to Defendants' failure to accurately record and compensate for all hours  
3 worked. As a result of this policy and practice, Plaintiff and the Aggrieved Employees were  
4 required to perform off-the-clock work that Defendants either knew or should have known they  
5 were performing.

6           28. As one such example, Defendants required Plaintiff and the Aggrieved  
7 Employees to clock out for meal periods but continue to perform work off-the-clock. However,  
8 because this time was spent under Defendants' control but before being allowed to clock in, it  
9 was uncompensated in violation of California law and led to minimum and regular wage  
10 violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es]  
11 not allow employers to require employees to routinely work for minutes off the clock without  
12 compensation"); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable  
13 when employee is under company's control and where the tasks served the employer's interests).

14           29. Consequently, Defendants violated California Labor Code laws and minimum  
15 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and  
16 Cal. Code Regs., tit. 8, section 11090, subs. 1 and 4(B).

17           30. Plaintiff is informed and believes and thereon alleges that Defendants  
18 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved  
19 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

20           31. Defendants' conduct was willful, as Defendants knew that Plaintiff and the  
21 Aggrieved Employees were entitled to be paid wages throughout the statutory period for each  
22 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay  
23 them in accordance thereto.

24           32. As a result of the unlawful employment practices alleged herein, Plaintiff, on  
25 behalf of the State of California, seeks the assessment of all applicable and available PAGA  
26 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or  
27 any other damages permitted under PAGA.

28       ///



1 as shift differentials). However, during workweeks where the Aggrieved Employees worked  
2 overtime hours and earned additional nondiscretionary compensation, Defendants failed to  
3 include that compensation in the calculations for the regular rate of pay and instead paid  
4 overtime at only 1.5 times the base rate of pay – violating the well-established rule that overtime  
5 must always be paid at time and one-half the regular rate of pay.

6 39. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage  
7 Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because  
8 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per  
9 week without proper overtime compensation.

10 40. Plaintiff is informed and believes and thereon alleges that Defendants  
11 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the  
12 Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

13 41. Defendants' conduct was willful, as Defendants knew that Plaintiff and the  
14 Aggrieved Employees were entitled to be paid proper overtime wages throughout the statutory  
15 period, yet Defendants chose not to pay them in accordance thereto.

16 42. As a result of the unlawful employment practices alleged herein, Plaintiff, on  
17 behalf of the State of California, seeks the assessment of all applicable and available PAGA  
18 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or  
19 any other damages permitted under PAGA.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL PERIODS**

22 (Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

23 *Against All Defendants*

24 43. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
25 as if fully alleged herein.

26 44. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants  
27 who did not receive proper protections and benefits of the laws governing mandatory meal  
28 periods.

1           45. Labor Code § 226.7 requires employers, including Defendants, to provide  
2 employees with meal periods as mandated by the Industrial Welfare Commission.

3           46. Labor Code § 512(a), in part, provides that employers, including Defendants, may  
4 not employ an employee for a work period of more than five hours per day without providing an  
5 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,  
6 except that if the total work period per day of the employee is no more than six hours, the meal  
7 period may be waived by mutual consent of both the employer and the employee. Employers  
8 may not employ an employee for a work period more than 10 hours per day without providing  
9 the employee with a second meal period of not less than 30 minutes.

10           47. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),  
11 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of  
12 pay for each meal period that is missed.

13           48. As described above, Plaintiff and the Aggrieved Employees were frequently denied  
14 compliant meal periods, because when returning from meal periods, employees were required to  
15 undergo the same off-the-clock procedures as described above resulting in shortened meal periods.  
16 Also, all relevant times herein, Plaintiff and the Aggrieved Employees were denied the 30-  
17 minute meal periods to which they were entitled. As a result of Defendants' policies and  
18 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when  
19 they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal  
20 period while under the control of the Company, (3) forced to take a shortened meal period, (4)  
21 forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second  
22 meal period for shifts in excess of 10 hours.

23           49. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage  
24 Order every pay period because Plaintiff and the Aggrieved Employees were not provided with  
25 all mandatory meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees  
26 one additional hour of compensation at the regular rate of pay in lieu thereof.

1           50.     At all relevant times herein, Defendants failed to provide Plaintiff and the  
2 Aggrieved Employees all mandated meal periods and failed to pay wage premiums in lieu of  
3 mandated meal or rest periods, thereby receiving an economic benefit.

4           51.     On information and belief, Plaintiff and the Aggrieved Employees did not  
5 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers  
6 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not  
7 voluntarily agreed to, were a condition of employment, or were a part of a contract of an  
8 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved  
9 Employees to take meal periods in accordance with California law.

10          52.     As a result of the unlawful employment practices alleged herein, Plaintiff, on  
11 behalf of the State of California, seeks the assessment of all applicable and available PAGA  
12 remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or  
13 any other damages permitted under PAGA.

14                   **FOURTH CAUSE OF ACTION**

15                   **FAILURE TO PROVIDE REST BREAKS**

16                   (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

17                   *Against All Defendants*

18          53.     Plaintiff incorporates the preceding paragraphs of the First Amended Complaint  
19 as if fully alleged herein.

20          54.     Plaintiff and the Aggrieved Employees are and/or were employees of Defendants  
21 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

22          55.     Labor Code § 226.7 requires employers, including Defendants, to provide rest  
23 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

24          56.     The IWC Wage Order § 12 states, in part, that every employer shall authorize and  
25 permit all employees to take rest periods, which insofar as practicable shall be in the middle of  
26 each work period. Employees shall receive a 10-minute rest period every four hours or major  
27 fraction thereof that they are required to work. Authorized rest period time shall be counted, as  
28 hours worked, for which there shall be no deduction from wages.



63. Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month.

64. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

65. At all relevant times herein, Defendants did not provide Plaintiff and the Aggrieved Employees with all wages due and owing each pay period, including, but not limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums, within the time specified by Labor Code § 204.

66. As a result of the unlawful employment practices alleged herein, Plaintiff, on behalf of the State of California, seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

### SIXTH CAUSE OF ACTION

### FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201 – 203)

### *Against All Defendants*

67. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

68. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the timing and payment of wages.

69. Labor Code § 201 requires that the employer immediately pay any wages, without abatement or reduction, to any employee who is discharged.

1 70. Labor Code § 202 requires that the employer pay all wages earned and unpaid,  
2 without abatement or reduction, no later than 72 hours of receiving an employee's notice of  
3 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

4 71. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a  
5 penalty from the due date thereof at the same rate until paid or until an action therefore is  
6 commenced, but the wages shall not continue for more than thirty (30) days.

7 72. At all relevant times, Defendants employed a policy and practice whereby  
8 Plaintiff and the Aggrieved Employees were not paid all wages due and owing upon separation  
9 of employment within the time required by Labor Code §§ 201 and 202.

10 73. Also, at all relevant times, Defendants engaged in the practice of failing to pay all  
11 wages due and owing to Plaintiff and the Aggrieved Employees upon separation of employment,  
12 including, but not limited to, minimum, regular, and overtime wages, meal and rest period  
13 premiums, and vested vacation wages.

14 74. Additionally, at all relevant times, Defendants failed to pay all mandated sick  
15 wages owed to the Aggrieved Employees at the proper rate of pay under Labor Code § 246(l).

16 75. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees  
17 must be "calculated in the same manner as the regular rate of pay for the workweek in which the  
18 employee uses paid sick time, whether or not the employee actually works overtime in that  
19 workweek." Additionally, Labor Code § 246(l)(2) states that the paid sick time must be  
20 "calculated by dividing the employee's total wages, not including overtime premium pay, by the  
21 employee's total hours worked in the full pay periods of the prior 90 days of employment."

22 76. Here, Defendants only calculated and paid sick pay at the base rate of pay, rather  
23 than at the rate required by Labor Code § 246, leading to unpaid sick pay and violations of Labor  
24 Code §§ 201 – 203.

25 77. Plaintiff alleges that, at all times material to this action, Defendants had a planned  
26 pattern and practice of failing to timely pay Plaintiff and the Aggrieved Employees all wages due  
27 and owing upon separation of employment as required by Labor Code §§ 201 and 202.  
28

78. As a result of the unlawful employment practices alleged herein, Plaintiff, on behalf of the State of California, seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

### SEVENTH CAUSE OF ACTION

## FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

### *Against All Defendants*

79. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

80. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the provision of accurate itemized wage statements.

81. Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

82. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Aggrieved Employees due to violations including: failure to accurately state total hours worked (the wage statements failed to accurately reflect total compensable hours due to the illegal off-the-clock sanitizing, donning and doffing of PPE, temperature checks and screenings prior to clocking in for payroll purposes at the beginning of shifts and upon returning from meal periods); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay and shift differential rate of pay); and failure to accurately state the corresponding number of hours worked at each hourly rate.

1 83. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)  
2 each period due to the failure to pay and report premium wages for denied meal periods and rest  
3 breaks under § 226.7.

4 84. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect  
5 to Plaintiff and the Aggrieved Employees because Defendants failed to provide a wage statement  
6 to Plaintiff and the Aggrieved Employees that complied with the requirements of § 226(a).

7 85. Unlike class action claims, a PAGA plaintiff need not meet the "injury" and  
8 "knowing and intentional" violation requirements of Labor Code § 226(e). See *Lopez v. Friant*  
9 & Associates, LLC (2017) 15 Cal.App.5th 773, 788 ("a plaintiff seeking civil penalties under  
10 PAGA for a violation of section 226(a) does not have to satisfy the "injury" and "knowing and  
11 intentional" requirements of section 226(e)(1)"); See also *Lawson v. ZB, N.A.* (2017) 18  
12 Cal.App.5th 705, 722 ("the scienter requirement [of § 226(e)] has no application in a PAGA  
13 claim for violation of [§ 226(a)]").

14 86. As a result of the Defendants' violations of Labor Code § 226, Plaintiff, on behalf  
15 of the State of California, seeks the assessment of all applicable and available PAGA remedies  
16 pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other  
17 damages permitted under PAGA.

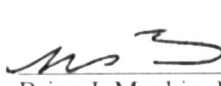
18 **VI. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, on behalf of the State of California as the real party in interest,  
20 prays for judgment and relief against Defendants, jointly and severally, as follows:

- 21 1. For the assessment of all remedies and/or penalties available under the PAGA;  
22 2. For reasonable attorneys' fees and costs of suit to the extent permitted by law; and  
23 3. For such other and further relief as the Court deems just and proper.  
24

25 Dated: August 31, 2023

LAUBY, MANKIN & LAUBY LLP

26  
27 BY:  

28 Brian J. Mankin, Esq.  
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[illegible]

On August 31, 2023, I caused to be served the foregoing document(s) described as follows:

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Tracie Chiarito, Declarant

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

SEP 11 2023

Samantha Becerra